

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Malibu Associates, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Corporation Franchise Tax :  
under Article 9-A of the Tax Law  
for the Years 1970 - 1972. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of June, 1980, he served the within notice of Decision by certified mail upon Malibu Associates, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Malibu Associates, Inc.  
c/o Sol Leistner  
New York, NY 10011  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
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Malibu Associates, Inc. :

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State of New York  
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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of June, 1980, he served the within notice of Decision by certified mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs  
Rosen & Reade  
10 E. 40th St.  
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

June 6, 1980

Malibu Associates, Inc.  
c/o Sol Leistner  
223 W. 19th St.  
New York, NY 10011

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Rosen & Reade  
10 E. 40th St.  
New York, NY 10016  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1978 at 1:40 P.M. Petitioner appeared by Rosen & Reade, Esqs. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre, Esq., of counsel).

## ISSUE

Whether a timely petition was filed for the three years in issue, as required by section 1081(b) of the Tax Law.

## FINDINGS OF FACT

1. On January 30, 1976, the Tax Compliance Bureau issued notices of deficiency against petitioner, Malibu Associates, Inc. for 1970, 1971 and 1972, pursuant to statements of audit adjustment issued by the Corporation Tax Bureau on September 10, 1975. In 1970 the deficiency was \$518.00, plus penalty and/or interest of \$162.94, for a total of \$680.94; in 1971, it was \$1,681.00, plus penalty and/or interest of

\$427.92, for a total of \$2,108.92; in 1972, it was \$1,803.00, plus penalty and/or interest of \$418.04, for a total of \$2,221.04. On August 19, 1976, the Corporation Tax Bureau issued a second Notice of Deficiency for 1972 in the amount of \$1,803.00, plus penalty and/or interest of \$406.98, for a total of \$2,269.98.

2. On November 25, 1975, petitioner advised the Tax Compliance Bureau by letter that the Statement of Audit Adjustment for 1970, 1971 and 1972 should be readjusted to conform to the Federal return; petitioner specifically referred to line 20 of Page 4 of Federal form 1120 for each year in issue.

3. On February 25, 1976, in response to the notices of deficiency issued by the Department and dated January 30, 1976, petitioner's accountant and a representative directed attention to the letter of November 25, 1975; again petitioner requested consideration be given to the facts stated therein, listing the revised balances which it considered due for the years in issue.

4. On April 29, 1976, referring to petitioner's letters of November 25, 1975 and February 25, 1976, the Audit Division requested additional information to enable it to determine and adjust the tax which was dependent upon a final condemnation award to petitioner.

5. On July 20, 1976, in response to the Audit Division's inquiry of April 29, 1976, petitioner's accountant provided the additional information and requested that the matter be held in abeyance until litigation on a condemnation award was concluded.

#### CONCLUSIONS OF LAW

A. That petitioner, Malibu Associates, Inc.'s letter dated February 25, 1976 sought a redetermination of deficiencies for 1970, 1971 and 1972, and was within the ninety days prescribed by section 1089(b) of the Tax Law; therefore, the petition was timely.

B. That the letter of February 25, 1976 by petitioner which contained its own computation for the periods in issue was followed by a request by the Department of Taxation and Finance for additional information, which information was provided.

C. That in view of the above Conclusions of Law, petitioner is hereby afforded the opportunity to continue its petition for 1970, 1971 and 1972 in a formal hearing.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION

*James A. Tuohy*  
PRESIDENT

*James A. Tuohy*  
COMMISSIONER

*Francis Q. Kolny*  
COMMISSIONER